

MONTANA LEGISLATIVE HISTORY

Chapter 575 19 75

Bill H 575 S _____ Original bill & history C

H. Committee on Education

Hearing Date(s) Feb 15 ✓ C

Feb 16 - C

_____ C

_____ C

Date Out Feb 16 - C

S. Committee on Business & Industry

Hearing Date(s) Mar 1 - C

Mar 10 - C

_____ C

_____ C

Mar 16 - C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

2/13	FIRST READING		
2/13	REFERRED TO HEALTH CARE SELECT		
2/14	FISCAL NOTE REQUESTED		
2/20	FISCAL NOTE RECEIVED		
2/20	FISCAL NOTE PRINTED		
2/21	HEARING		
3/04	REREFERRED TO JOINT HEALTH CARE SELECT		
3/07	HEARING		
3/15	COMMITTEE REPORT—BILL PASSED		
3/16	REREFERRED TO APPROPRIATIONS		
3/22	TABLED IN COMMITTEE		
3/23	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/23	2ND READING PASSED	85	12
3/23	3RD READING PASSED	87	11

3/24 TRANSMITTED TO SENATE
FIRST READING

NOTE: ON 3/8, THE SENATE SUSPENDED ITS RULES TO ALLOW THE JOINT HEALTH CARE SELECT COMMITTEE TO VOTE AS A BODY RATHER THAN A SEPARATE CHAMBER. THUS HB 542 PROCEEDED DIRECTLY TO 2ND READING SINCE THIS BILL, WHILE IN THE HOUSE, ALREADY HAD BEEN REPORTED OUT OF THIS COMMITTEE.

3/25	SPONSOR FISCAL NOTE RECEIVED	23	21
3/25	2ND READING CONCURRED	23	21
3/27	3RD READING CONCURRED	49	0

RETURNED TO HOUSE
3/28 SIGNED BY SPEAKER
3/28 SIGNED BY PRESIDENT
3/29 TRANSMITTED TO GOVERNOR
4/03 SIGNED BY GOVERNOR
CHAPTER NUMBER 323
EFFECTIVE DATE: 04/03/95

HB 543 INTRODUCED BY WAGNER, ET AL.
REVISE REQUIREMENTS FOR POSTING OF SECURITY WHEN AN
INJUNCTION OR RESTRAINING ORDER IS SOUGHT

2/13	INTRODUCED		
2/13	FIRST READING		
2/13	REFERRED TO JUDICIARY		
2/15	HEARING		
2/17	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	2ND READING PASSED	62	37
2/20	3RD READING PASSED	64	36

TRANSMITTED TO SENATE			
2/21	FIRST READING		
2/21	REFERRED TO BUSINESS & INDUSTRY		
3/14	HEARING		
3/17	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/25	2ND READING CONCURRED	31	17
3/27	3RD READING CONCURRED	34	16

RETURNED TO HOUSE WITH AMENDMENTS			
4/04	2ND READING AMENDMENTS NOT CONCURRED	87	13
4/04	FREE CONFERENCE COMMITTEE APPOINTED		
4/08	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/10	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	69	3
4/11	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	65	34

SENATE			
4/05	FREE CONFERENCE COMMITTEE APPOINTED		
4/08	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/10	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	28	18
4/11	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	31	18
4/13	SIGNED BY SPEAKER		
4/18	SIGNED BY PRESIDENT		
4/18	TRANSMITTED TO GOVERNOR		
5/01	SIGNED BY GOVERNOR		
CHAPTER NUMBER 575			
EFFECTIVE DATE: 10/01/95			

HB 544 INTRODUCED BY TUSS, ET AL.

APPROPRIATE MONEY TO BOARD OF REGENTS TO PROVIDE FINANCIAL
ASSISTANCE TO RESIDENT NONBENEFICIARY STUDENTS ATTENDING
TRIBALLY CONTROLLED COMMUNITY COLLEGES IN MONTANA
BY REQUEST OF THE COMMITTEE ON INDIAN AFFAIRS

2/13	INTRODUCED		
2/13	FIRST READING		
2/13	REFERRED TO APPROPRIATIONS		
3/20	HEARING		
3/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/23	2ND READING PASSED	64	34
3/23	3RD READING PASSED	64	35

TRANSMITTED TO SENATE			
3/24	FIRST READING		
3/24	REFERRED TO FINANCE & CLAIMS		
3/30	HEARING		
4/01	COMMITTEE REPORT—BILL CONCURRED		
4/05	2ND READING CONCURRED	50	0
4/06	3RD READING CONCURRED	50	0

RETURNED TO HOUSE
4/08 SIGNED BY SPEAKER
4/10 SIGNED BY PRESIDENT
4/10 TRANSMITTED TO GOVERNOR
4/13 SIGNED BY GOVERNOR
CHAPTER NUMBER 431
EFFECTIVE DATE: 04/13/95

HB 545 INTRODUCED BY MURDOCK

EXEMPT FROM PROPERTY TAXATION THE VALUE OF IMPROVEMENTS
MADE TO COMMERCIAL BUILDINGS THAT REMOVE BARRIERS TO
PERSONS WITH DISABILITIES

2/13	INTRODUCED		
2/13	FIRST READING		
2/13	REFERRED TO TAXATION		
2/14	FISCAL NOTE REQUESTED		
2/18	FISCAL NOTE RECEIVED		
2/20	FISCAL NOTE PRINTED		
2/28	HEARING		
3/10	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/20	REVISED FISCAL NOTE REQUESTED		
3/24	REVISED FISCAL NOTE RECEIVED		
3/24	2ND READING PASSED	92	4
3/25	3RD READING PASSED	91	7

House BILL NO. 543

INTRODUCED BY Wagner

Devlin Scott Bohn Foster
Forrest Boyd Wibben Cole Knox
A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE REQUIREMENTS FOR POSTING OF SECURITY WHEN AN INJUNCTION OR RESTRAINING ORDER IS SOUGHT; REMOVING THE EXEMPTION FOR GOVERNMENTAL ENTITIES; REQUIRING SECURITY TO COVER LOST WAGES, SALARIES, AND BENEFITS WHEN AN INDUSTRIAL OPERATION OR ACTIVITY IS ENJOINED OR RESTRAINED; AND AMENDING SECTIONS 27-19-306, 27-19-307, AND 27-19-403, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-19-306, MCA, is amended to read:

"27-19-306. **Security for damages.** (1) On granting an injunction or restraining order, the court or judge shall require a written undertaking to be given by the applicant, ~~in such sum as the court considers proper,~~ for the payment of ~~such~~ the costs and damages ~~as~~ that may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. ~~The~~ Except as provided in subsection (2), the undertaking:

(a) must be fixed at a sum that the judge considers proper; and

(b) may not be required waived:

(i) in domestic disputes; or when the state or a state agency, a county or subdivision thereof, or a municipal corporation is the party seeking the injunction or restraining order. In any case, the court in its discretion may waive the undertaking in

(ii) in the interest of justice.

(2)(a) If a party seeks an injunction or restraining order against an industrial operation or activity, the written undertaking must consist of a bond with one or more corporate sureties authorized by law. The amount of the bond must be set in an amount that at a minimum includes all of the wages, salaries, and benefits of the employees of the party enjoined or restrained during the time that the injunction or restraining order is in effect. The bond must be conditioned to indemnify the employees of the party enjoined or restrained against lost wages, salaries, and benefits sustained by reason of the injunction or restraining order.

1 (b) As used in subsection (2)(a), "industrial operation or activity" includes but is not limited to
2 construction, mining, timber, and grazing operations.

3 ~~(2)(3)~~ Within 5 days after the service of the injunction, the party enjoined may ~~except~~ object to
4 the sufficiency of the sureties. If ~~he~~ the party enjoined fails to ~~do so~~ object, ~~he waives~~ all objections to ~~them~~
5 the sufficiency of the sureties are waived. When ~~excepted~~ objected to, the applicant's sureties, upon
6 notice to the party enjoined of not less than 2 or more than 5 days, ~~must~~ shall justify before a judge or clerk
7 in the same manner as upon bail on arrest. If ~~they~~ the sureties fail to justify or if others in their place fail
8 to justify at the time and place appointed, the order granting the injunction must be dissolved.

9 (4) A party found to have been wrongfully enjoined or restrained may bring a civil action against
10 the party seeking the injunction or restraining order for all damages proximately caused by the injunction
11 or restraining order, including the reasonable expenses incurred in dissolving the injunction or restraining
12 order."

14 **Section 2.** Section 27-19-307, MCA, is amended to read:

15 **"27-19-307. New undertaking for security following hearing.** On a hearing to show cause, the
16 ~~court or judge~~ may require a new undertaking, in the same or a different sum, to be given by the party who
17 obtained the order, with ~~like~~ similar sureties and to the ~~like~~ same effect as upon granting of the original
18 order. The persons executing the new undertaking become liable ~~thereon~~ as if they had executed ~~it~~ the
19 surety upon the granting of the original order. The persons who executed the original undertaking remain
20 liable ~~thereon~~ only until the new undertaking is given and approved, ~~and no longer~~. A new undertaking
21 must comply with the provisions of 27-19-306."

23 **Section 3.** Section 27-19-403, MCA, is amended to read:

24 **"27-19-403. New undertaking for security following hearing.** Upon the hearing, the ~~court or judge~~
25 may require a new undertaking, in the same or a different sum, to be given by the party who obtained the
26 order, with ~~like~~ similar sureties and to the ~~like~~ same effect as the undertaking executed upon the granting
27 of the original order. The persons executing the new undertaking become liable ~~thereon~~ as if they had
28 executed ~~it~~ the surety upon the granting of the original order. The persons who executed the original
29 undertaking remain liable ~~thereon~~ only until the new undertaking is given and approved, ~~and no longer~~. A
30 new undertaking must comply with the provisions of 27-19-306."

-END-

HEARING ON HB 543

Opening Statement by Sponsor:

REP. DOUGLAS WAGNER, HD 83, said the main provision of the statute was that a party seeking an injunction or restraining order against an industrial operation must post a bond that would include wages, salaries and benefits of the employees of the operation so long as the injunction was in effect. It further provided that a party which was wrongfully enjoined or restrained could bring a civil action against the party which sought the injunction or restraining order. Governmental agencies are not required to give security. He distributed amendments to HB 543.
EXHIBIT 1

Proponents' Testimony:

Tamara Johnson, Citizens United For A Realistic Environment (CURE), presented written testimony in support of HB 543.
EXHIBIT 2

{Tape: 1; Side: A; Approx. Counter: 41.0}

Brad Reel, CURE, said little is being said about the losers in this type of litigation. Those losers are the broken families. He said that the code of justice which is required is "put up or shut up." He said that those who are bringing the actions against them should be willing to invest as much as those who work for those companies. Currently, the workers and their families are the ones who suffer the losses.

Larry Brown, Agricultural Preservation Association, Senior Environmental Scientist for Morrison Maierle, echoed the statements made in previous testimony. He said the bill had a far-reaching effect in the timber, mining, grazing and construction industries. These industries are adversely affected by the frivolous emotionally-driven, agenda-oriented appeals and injunctions. He saw these actions as inhibiting getting the job done. He said it was time for accountability and responsibility on the part of those bringing the actions and believed this bill was a good step toward that end. He cited a case he was involved in as support for his position as a proponent of the bill.

Eric Williams, Pegasus Gold, said this was a pro-family bill. He said the environmental groups who bring many of the actions are well able to post the bond. This form of filing lawsuits and injunctions, etc., is a part of their fund raising strategy, he said.

Bob Williams, Montana Mining Association, went on record as supporting HB 543.

REP. BILL TASH, HD 34, rose in favor of the bill in representing Beaverhead Grazers and the Grasshopper Association.

REP. DUANE GRIMES, HD 39, asked to be recorded as a proponent.

Opponents' Testimony:

Kim Wilson, Attorney, described himself as the attorney for the plaintiffs in the Golden Sunlight lawsuit representing the environmental groups who sued the Department of State Lands over its wrongful issuance of the permit. He said it was ironic that the mine was discussed as an example of why this bill was good legislation. He said the facts were that this legislation would have had no impact on that lawsuit filed three years ago. After the lawsuit was filed, there was no injunction sought initially. He discussed the final settlement of that lawsuit in favor of the plaintiff that the mine had been operating illegally for two years previous to the court's decision. They could have sought an injunction at that point but worked in good faith with the mining company to negotiate the settlement. When the mine was closed for seven months, it was not closed because of an injunction but rather because of mining company error which could have been avoided had the state done its work properly in the beginning of the permitting process, he contended.

Jim Jensen, Executive Director, Montana Environmental Information Center (MEIC), urged the committee to look at the record from the last session where it was made clear that this kind of legislation is unconstitutional and the Montana Supreme Court has ruled specifically in a case in Big Horn County in a similar circumstance. He shared what would have been the consequences if this bill had been in effect in other cases in the past.

{Tape: 1; Side: B}

Stan Fraser, Montana Wildlife Federation, said the bill was about greed. He said it was an effort for the timber industry and the mining industry to "duck" responsibility and pass costs on to future generations which should be paid now. In most cases, he said, lawsuits are filed not against individual corporations or against private property, but against government agencies to force that agency to follow the law.

Don Judge, AFL-CIO, opposed HB 543. Though he empathized with what individuals had experienced as a result of the lawsuits, he did not think this bill would help them. He defended the actions which included injunctions taken in the cases cited in previous testimony. He said in one case if they had not filed the injunction because of the stipulation in this bill to pay the wages, salaries and benefits of the workers during the period of the injunction, Montana citizens would be living in danger because of the construction practices used in laying the pipeline in that case. He said this was anti-citizens legislation.

Ted Lange, Northern Plains Resource Council (NPRC), echoed comments already made. He said they do not factor lawsuits into their budgets and that they operate on a limited budget. They

undertake lawsuits rarely and have to raise money beyond their budgets to pursue them. When they take on lawsuits, it must be an extreme case and when they go for injunctions or restraining orders, it would have to be an very extreme situation. Those actions which are taken are entered into for the protection of Montana taxpayers' health and well being.

{Tape: 1; Side: B; Approx. Counter: 18.9}

Questions From Committee Members and Responses:

REP. SHIELL ANDERSON asked for a case cite for the unconstitutional ruling in bonding requirements.

Mr. Jensen said he did not have it with him, but would supply it later.

REP. ANDERSON asked if he knew what the budgets are for the Audubon Society, the Montana Wildlife Federation, the National Wildlife Federation and Sierra Club.

Mr. Jensen did not know what the national organization's budgets are, but said the Montana Audubon Council receives no money at all from the National Audubon Society and the Montana Wildlife Federation receives no money from the national organization.

REP. ANDERSON asked if the national organizations partake in the lawsuits.

Mr. Jensen said they sometimes do.

REP. ANDERSON asked what the problem is with having someone who would be challenging the practices of the companies and putting people out of work put up a bond while they are expecting bonds from those same companies for reclamation, and desiring bonds for water quality and societal destruction. If they are successful in the legal basis for the challenge, the bond would be recovered.

Mr. Jensen clarified the suit against the Golden Sunlight mine. There were national organizations which did not provide funds. NPRC raised money for that suit separately. In terms of the public interests versus the private interests, those mines have profit-driven motives and have resources associated with their activities completely different from the public interests, resources, and ability. He said it would be interesting to see if a rancher were to get a grazing lease and had to post a bond for potential damage to the land, whether or not the rancher would feel that was fair even though he was assured that he would get it back in the future.

REP. TASH questioned Mr. Fraser regarding his testimony about the settlement of the Beaverhead case.

Mr. Fraser said he should have said it was a proposed settlement. He said the lawyers from the forest service and the lawyers from the Montana and National Wildlife Federation have proposed a settlement which has not yet been approved by the judge.

REP. TASH asked if it was correct that the lawsuit also asked for a permanent injunction against grazing cattle on the Beaverhead National Forest.

Mr. Fraser replied that if the forest service does not come into compliance there would be an injunction. The injunction was not brought at the beginning of the suit.

REP. TASH asked about the timing of the injunction.

Mr. Fraser said the proposed settlement calls for the forest services, over a ten-year period, to do a set number of the grazing _____ (inaudible) and he believed there were approximately 145 which were not in compliance.

REP. TASH referred to **Mr. Fraser's** testimony that a co-plaintiff in the case was the Montana Wildlife Federation and the National Wildlife Federation and asked to confirm the name of the director of the National Wildlife Federation and his annual salary.

Mr. Fraser said he did not know the salary and that the state federation does not receive money from the national organization.

REP. TASH asked if the national organization didn't furnish money in bringing this case.

Mr. Fraser said they were partners and they each paid part of the cost.

REP. TASH asked if that was not a source of revenue from the National Wildlife Federation.

Mr. Fraser said the money did not go to the Montana Wildlife Federation, but went directly to the cost of the suit.

REP. GRIMES asked **Mr. Eric Williams** to respond to remarks made in testimony against the Pegasus Gold operation about the water quality.

Mr. Williams said they were currently involved in a lawsuit with the state.

REP. GRIMES asked if the water which goes through the tailings was from their mining operations or from previous mine operations.

Mr. Williams asked for the question to be re-phrased.

REP. GRIMES said his point was that some of the water coming off the mine was not necessarily from the current operation but coming out of the existing tailings prior to their taking the site.

Mr. Williams said that some of the water which is being discussed in the lawsuit is from around the turn of the century.

REP. MC GEE asked, "What's the cost of a bond?"

Mr. Jensen said state law requires that a bond be posted by a mining company for surface reclamation equivalent to the actual cost of reclamation and that those bonds are to be adjusted on a regular basis to reflect actual costs at any given time.

REP. MC GEE said he was concerned more with the cost of filing a bond to cover the costs should this bill pass.

Mr. Jensen said that cost was unknown and would depend on each individual circumstance.

REP. MC GEE referred to earlier testimony in which he had said, "None of them could have been filed." He wanted to know if they don't know what a bond would cost, why none of them could have filed an injunction.

Mr. Jensen said he was talking about a specific example from the past and not guessing about something in the future.

REP. MC GEE said he had alluded to the fact that in all cases the passage of this bill would have prevented anyone from filing an injunction.

Mr. Jensen said he was referring to past cases.

REP. MC GEE asked if this bill would prevent them in the future from filing an injunction.

Mr. Jensen said the general answer was, yes. If in the future they felt it was necessary, it was extremely unlikely given the nature of the bill that with their small budget they could seek an injunction.

REP. MC GEE asked if they ever join forces with any other environmental groups to bring an action against anybody.

Mr. Jensen said they had on three occasions.

REP. MC GEE asked if that was the case, then would it not be possible for them to get the funding with the other entities.

Mr. Jensen said that in two of the cases, MEIC was the largest; in one, the organization they joined with had no staff and was a

purely voluntary organization with no budget. He reiterated that MEIC had only sought an injunction in one case and had not sought an injunction in the Sunlight case.

REP. MC GEE asked Mr. Jensen to identify what he meant by public interest.

Mr. Jensen said that MEIC and other organizations like it represent publicly owned resources and public values such as air and water quality. Those interests are not represented by private developers.

REP. MC GEE asked if the National Wildlife Federation and Montana Wildlife Federation could jointly have enough resources to file a bond under this bill.

Mr. Fraser said that anything was possible. He said that under the case which had been discussed, they did not seek an injunction at the beginning.

REP. CURTISS asked Mr. Judge if it was true that the AFL-CIO had come to the legislature to get the same protection for their workers as this bill was asking for.

Mr. Judge said he had testified on behalf of hotel and restaurant employees to repeal the bonding bill on taverns in this current session.

REP. CURTISS asked if it was true that in the past the AFL-CIO had requested that employers have to assure workers of their lost wages in case that company should go bankrupt or some other contingency.

Mr. Judge said he had testified in the past on some amendments to a wage protection act for employees of taverns. They supported the repeal of that legislation during this session.

REP. CURTISS asked if he would agree that this is really a workers' bill.

Mr. Judge did not agree.

REP. CURTISS asked who the principles were in bring the action against Golden Sunlight.

Mr. Wilson said the MEIC, National Wildlife Federation and the Montana Chapter of the Sierra Club, Gallatin Wildlife Association and Mineral Policy Center, with the lion's share of the funding of the lawsuit coming from MEIC, were the principles.

REP. DEBBIE SHEA asked if the bill would have a backlash effect on the workers themselves.

REP. WAGNER said that if the court upheld the filing of the injunction and that it was warranted, there would be no problem.

REP. SHEA asked where the workers would get the backup for it in terms of the bond.

REP. WAGNER said that in the case which had been discussed where the workers sought the injunction, the labor union stepped in and filed.

REP. SHEA asked what would be the case if the workers were not with the union and did not have anyone to support them, would they just let it go unchecked.

REP. WAGNER said that line 18 subsection (a) provided for a fixed sum which the judge considered proper and if they were to show that they had insufficient funds, the judge would set it accordingly. It would also depend upon the numbers of employees who would be impacted by the action taken in setting the bond.

REP. SHEA thought it would tie the hands of the workers and would do damage to the ones the bill was designed to protect.

REP. CHRIS AHNER wondered what had caused the ground to shift at the Golden Sunlight Mine and how much it cost to correct the problem.

John North, Chief Legal Counsel, Department of State Lands, said he understood that there were certain blocks of land underneath the operation. As the mine progressed, the mine dump was placed on top of the block and some material was removed from the bottom of the block resulting in its movement. He did not know the cost.

REP. BILL CAREY asked how much money would be required to file an injunction.

Mr. Wilson said that he did not know. From the language of the bill, he assumed that the bond would have to include the payroll as well as any lost profit amounting to hundreds of thousands of dollars.

Closing by Sponsor:

REP. WAGNER focused on the intent to be conditioned to indemnify the employees of the enjoined party. The money would go back to make the workers whole if the enjoining party were found to be at fault. It would not mean putting money into a corporation or big business, but directed to the employees' lost wages. It would bring fairness to Montana families which are negatively impacted by these actions. If the case is upheld, the bond is returned; if it is frivolous, it is lost. They were attempting to say that if someone feels strongly enough to bring the action, they need to be willing to pay for it. The possibility of using state

legislation to guide the national government was appealing to him. He refuted testimony that this would prevent the filing of injunctions and that it is based on greed, but said that it is about the employees who have been affected by the actions.

EXECUTIVE ACTION ON HB 482

Motion: REP. GRIMES MOVED HB 482 DO PASS.

Discussion: REP. SHEA said she had a problem with the bill in that there was no discussion about what they would do about the children who would not discuss the abortion with the parents but would choose a dangerous course of action.

REP. AHNER asked REP. SHEA if her daughter were to go through something like this at age 15, wouldn't she want to know.

REP. SHEA said she would and that was representative of her family, but not everybody has that circumstance. She said there are kids who would not play by the rules and they would cross state borders or seek back street abortions or harm themselves.

REP. AHNER said that in some cases, the opinion of the child about their parents that the parents would not understand is in error. She acknowledged those families which are dysfunctional which would not be supportive and might even abuse the girl. But she felt both kinds of families must be represented. She supported the belief that in times of crisis families can find the support and discover their love and support of one another to make the appropriate decision. She referred to the long-term implications and said that unless a person had gone through it, they had no way of knowing what those implications were.

{Tape: 2; Side: A}

REP. SHEA and REP. AHNER continued to discuss their points of view dealing with the dysfunctional families and that the bill ignored their needs versus the need for other families to have the opportunity to share in the decision.

REP. SMITH agreed that there are dysfunctional families, but said that it is not government's responsibility to make decisions for dysfunctional families. She felt that there were educational programs available in local communities which would provide accurate information and support. Sometimes a crisis can be a stepping stone for families to begin looking beyond their dysfunctional behavior, she stated as a result of her experience in working within community programs dealing with abortion.

REP. DIANA WYATT gave her perspective as a mother of a daughter and the inability of parents to protect their children from all things which might harm them. But she felt they were talking about the constitutional rights of those individuals rather than

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 2/15/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

Amendments to House Bill No. 543
First Reading Copy

Requested by Representative Wagner
For the Committee on

Prepared by Greg Petesch
February 15, 1995

1. Title, lines 5 and 6.
Following: ";" on line 5
Strike: remainder of line 5 through ";" on line 6
2. Page 1, line 13.
Strike: "On"
Insert: "Subject to 25-1-402, on"

P.O. Box 856
Whitehall, MT 59759

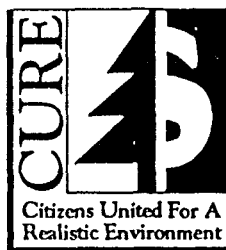


EXHIBIT 2
DATE 2/15/95
HB 543

(406) 287-3012
FAX (406) 287-3242

TESTIMONY OF TAMARA J. JOHNSON
HB #543

Good morning. Mr. Chairman, members of the committee, Representative Wagner, for the record, my name is Tammy Johnson. I am here today on behalf of CURE (Citizens United for a Realistic Environment).

HB #543 is a very important bill for our membership. As Representative Wagner explained in his statement, this bill would require the posting of a bond in an amount sufficient to cover employees wages, salaries and benefits when an injunction or restraining order against an industrial operation or activity is granted through the court system.

In everyday life, we are asked to make monetary commitments to guarantee something that we are sincere about. If you purchase a home or some land, you are required to put down earnest money to show that you are committed to the purchase. If you make a motel reservation by phone, you are asked to guarantee that reservation with a credit card. You are asked to prepay when you purchase an airline ticket. The reason for this is simple. No one is willing to take a financial loss due to a decision made by someone else. If you decide to not go through with the land or home purchase, stay in another motel, or drive instead of fly, you will forfeit the money you have paid as a guarantee of your intentions.

The court system is being used extensively for a variety of reasons these days, one of which is to request injunctions or restraining orders against industrial activities such as mining, timber, grazing, utilities, oil and gas, and construction. The problem with injunctions on legitimate businesses is that hardworking people who are employed in these industries find themselves faced with the possibility of being out of work. They are not going to be unemployed because they are not good, valuable employees. They are not going to be unemployed because they choose to be. They are unemployed because someone else has arbitrarily decided that they do not approve of the nature of their employers business. Sometimes, dedicated workers are faced with unemployment because our own state agencies are believed to have made an error.

Whether the party who brings the suit is right or wrong, is a decision for the court. The right of an individual or group to bring such an action in our courts is not being threatened, in spite of what you will probably be told by those opposing this bill. In fact, I support any citizens right to bring suit if they feel they have been wronged. But I, and quite literally, thousands of other Montana citizens, are tired of bearing the brunt of others actions. You see, we, the industry employees, are the ones who have been caught in the middle.

My children should not be made to suffer because someone does not like the work their father does for a living. My husband has worked as an electrician for a mine for over seven years. In seven years, he has only missed 2 scheduled work days due to my fathers death. He has had perfect attendance for 6 consecutive years. We have two children, one of which is developmentally disabled. Our health insurance is a godsend and my husbands wages also provide a home for his parents. We don't want praise and we don't want sympathy. What we want is simply to work hard, raise our family and be a productive member of our community and our state.

My husband and I have spent many sleepless nights worrying about the possibility of being unemployed and quite frankly, my husbands fear, which is shared by our whole family, of being unemployed simply because he is a miner, is the main reason I am standing before you today wearing this name tag. Although I have a great deal of respect for all of you and for this institution, I would choose to spend my time being at home with my family, reading to my son's second grade class and leading my daughters Girl Scout troop instead of making the round trip from Whitehall to Helena on a daily basis to visit with you.

The opponents to this bill will probably tell you that their rights cannot be infringed upon, that they can't afford to post such a bond. Well, my right to work, live and raise my family cannot be infringed upon either and my family cannot afford to be without an income or insurance.

We are not asking citizens to post a bond to cover the loss of the employer, although I believe that those at the top need to eat as well. We are not asking our government entities to post a bond. We are simply asking for some fairness here. Please give HB #543 a do pass recommendation and know that in doing so, you are supporting thousands of hardworking Montanas who otherwise may unfairly be denied their right to make a living. Thank you.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE 2/15/95

BILL NO. HB 543 SPONSOR(S) Rep. Wagner

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support
Larry Brown	Arg. Pres Assoc.	X
John Davis	Power, Auto & Rebuilding	
ERDE WOLCRAFT	PEGASUS Gold	X
Stan Frasier	MWF	
Brad Reel	CURE	X
Jamona Johnson	CURE	X
Bob Williams	MT. MINING ASSOC	X
Min Wilson		
Peggy Trenk	WETA	X
Bob Campbell	SeIA	
Don Judge	MT STATE AFL-CIO	
J.V. Bennett	Mont PERG	
Ted Lange	NPRC	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

wp:visbcom.man

CS-14

{Tape: 1; Side: A}

EXECUTIVE ACTION ON HB 543

Motion: REP. BILL TASH MOVED HB 543 DO PASS.

Motion: REP. DUANE GRIMES MOVED THE SPONSOR'S AMENDMENTS.
EXHIBIT 1

Discussion: REP. TASH said the amendments would remove the exemption for governmental entities.

REP. DEB KOTTEL said that 25-1-402, MCA, is the provision which applied.

Vote: The motion carried 12 - 6, REPS. WYATT, CAREY, SHEA, HURDLE, KOTTEL and MC CULLOCH voted no. REP. SMITH voted aye by proxy. REP. ANDERSON was absent.

Motion: REP. TASH MOVED HB 543 DO PASS AS AMENDED.

Discussion: REP. KOTTEL pointed out that this would require an undertaking for both restraining orders and injunctions. Restraining orders can be obtained without the other side being represented. She felt there should be an undertaking for that type of behavior. An injunction requires both parties to be present with a hearing and the judge makes the decision to issue the injunction. She felt an undertaking was inappropriate and would vote against the bill.

REP. TASH said it is the burden of proof which puts people out of business when injunctions are ordered. As grazers on Beaverhead National Forest they are wondering where they will find a summer home for 44,000 head of cattle because of the permanent injunction issued. It could break the county because it is the largest livestock producing county in the state. Those lands can't reasonably be utilized in any other fashion. He said it is an invasion of property rights and only fair that those who bring those kinds of onerous suits and force litigation post the bond in the same proportion as those who have to post their assets.

REP. KOTTEL was concerned about the consistency. She referred to a bill previously passed which gave the right to a legislator to intervene as a private party on behalf of the public interest. She asked if he would agree that if a legislator should do that under civil rules of civil procedure, that they should also post a bond or an undertaking.

REP. TASH answered, "Absolutely, in fact in this case in the Beaverhead National grazing suit, we have asked for and received intervening defendant status and so this parallels the same legislation". He said this was due process. But, he said, there are further costs incurred to reach that intervening

defendant status. He refuted the testimony of **Stan Frasier** as not being accurate and very much opposite to the facts.

REP. WILLIAM BOHARSKI spoke in favor of the bill. He said that the companies were required to put up a large bond before they start the projects. He said that large amounts of money are spent in the state agencies which for the purpose of carrying out this function--to keep organizations from coming in and violating these things and shutting industry down. He said it is a nightmare to try to get anything done in the state. They go through the process, pay the fees and then someone comes along to file some sort of lawsuit against them, puts a restraining order against them to keep them from doing business. He felt the protections are in place and he did not think using the courts was such a good idea, but the departments should be used to get it straightened out.

REP. DANIEL MC GEE asked the committee to keep in mind that the intent of the bond was to protect the wages, salaries and benefits of the employees.

REP. BRAD MOLNAR asked if there was any indication that it is just a particular activity which would be shut down or would a whole operation be shut down.

CHAIRMAN CLARK said he believed it was just the activities affected.

REP. MOLNAR asked if there was a problem with just working with restraining orders in the bill rather than both injunctions and restraining orders.

REP. TASH said that with both there is still an interference with business. Interference with business as well as the litigation and the threats of litigation are costly.

REP. CLIFF TREXLER pointed out that line 24 provided for orders against industrial operations and did not include grazing. Grazing according to this definition is not industrial. He asked how wages, salaries and benefits can be determined when the bond is required up front since there is no idea how long the injunction would last.

REP. TASH said lines 1 and 2 on page 2 state is it not limited to industrial activities.

Motion: **REP. TASH** MOVED TO AMEND PAGE 1, LINE 24 TO INCLUDE "COMMERCIAL OPERATION."

Discussion: **REP. BOHARSKI** said that would require a change in the definition of industrial operation or activity.

REP. TASH deferred to **John MacMaster** to conform the language.

Mr. MacMaster said it would not hurt to insert industrial or commercial operation or activity on page 1, line 24; then on page 2, line 1 they should also include industrial or commercial operation or activity.

REP. MC GEE believed all things were covered in the proposed language.

REP. TREXLER said he was referring to existing language which includes definitions about what an industrial operation is. He said he thought it needed to be narrowed.

REP. BOHARSKI asserted that the language on the top of page two applied to this section. He said it really did not matter where else in code the definition appeared because this particular definition applied to this particular section. He would be concerned about the scope of the bill in picking up a definition from somewhere else in statute without specifically defining it.

REP. TASH withdrew his amendment.

REP. JOAN HURDLE submitted that there are times when it might be necessary to interfere with business. She hesitated to support the bill because it placed restrictions on the people's right to intervene.

REP. AUBYN CURTISS strongly supported the bill. Many appeals and actions can currently be activated with just a simple postage stamp. She thought it was time that people became responsible for their actions and that frivolous actions can put many people out of work and cost large sums of money which gets passed on to consumers.

Vote: The motion (DO PASS AS AMENDED) carried 11 - 7, REPS. WYATT, CAREY, KOTTEL, SHEA, HURDLE, MC CULLOCH and TREXLER voted no. (REPS. SMITH voted aye and REP. SHEA voted no by proxy and REP. ANDERSON was absent.)

{Tape: 1; Side: A; Approx. Counter: 25.7; Comments: REP. SHEA'S proxy votes were reported and recorded, but not submitted to the secretary.}

EXECUTIVE ACTION ON HB 551

Motion: REP. KOTTEL MOVED HB 551 DO PASS.

Discussion: CHAIRMAN CLARK said that since it was a committee bill, he would get an additional sponsor sheet for the committee members to sign. REP. BOHARSKI agreed to carry the bill.

REP. KOTTEL said they had the information from the Attorney General's office and she presented and explained it to the committee. EXHIBIT 2



HOUSE STANDING COMMITTEE REPORT

February 16, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 543 (first reading copy -- white) do pass as amended.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, lines 5 and 6.
Following: ";" on line 5
Strike: remainder of line 5 through ";" on line 6
2. Page 1, line 13.
Strike: "On"
Insert: "Subject to 25-1-402, on"

-END-

Committee Vote:
Yes 11, No 7.

401553SC.Hbk

Amendments to House Bill No. 543
First Reading Copy

Requested by Representative Wagner
For the Committee on

Prepared by Greg Petesch
February 15, 1995

1. Title, lines 5 and 6.
Following: ";" on line 5
Strike: remainder of line 5 through ";" on line 6
2. Page 1, line 13.
Strike: "On"
Insert: "Subject to 25-1-402, on"

Closing by Sponsor:

REP. MILLS stated he regretted the experience which Mr. Olson related to the committee. He said this bill went a long way toward solving the problems that had been present for a long time.

REP. MILLS said if this committee passed HB 536, SEN. BENEDICT had agreed to carry it on the Senate floor.

HEARING ON HB 543Opening Statement by Sponsor:

REP. DOUG WAGNER, HD 83, Flathead County, presented HB 543. This bill asked for fair treatment for Montana families and workers when an injunction was filed. The main purpose of the bill was on page 1, (2), line 25, which stated if a party was seeking an injunction or restraining order against an industrial operation or activity, they must post a bond. The bond had to be structured to indemnify the employees of the industrial operation for their lost wages and benefits. He presented an amendment, EXHIBIT #11. Those amendments were requested by the State and were friendly amendments.

Proponents' Testimony:

Tamara Johnson, Citizens United for a Realistic Environment (CURE), presented her written testimony, EXHIBIT #12.

John Davis, CURE, spoke in support of HB 543. His testimony addressed the application HB 543 could have had on the recently settled lawsuit which was brought by the National Wildlife Federation and other environmental groups against the Department of State Lands and the Golden Sunlight Mine. CURE was permitted by Judge Honzel to intervene in the lawsuit to represent the interests of the employees of the Golden Sunlight Mine and other concerned citizens in the area of Whitehall.

Mr. Davis remarked in the House Judiciary Committee there was testimony from representatives of the National Wildlife Federation and other environmental groups to the effect that HB 543 was not necessary because an injunction was not formally sought against the Golden Sunlight Mine operations in that action. Mr. Davis maintained such testimony missed the point of HB 543. He said following the district court decision, a formal threat of an injunction was made. He related this bill did not address the propriety or the merits of the district court's decision to grant or deny an injunction. Mr. Davis explained HB 543 told the district court and a party seeking an injunction against an industrial operation or activity, that a bond would be

required which must be set at an amount and with the conditions set forth in Section 1 (2) of the bill.

Tom Monfortan, member of CURE and employee of Golden Sunlight Mine, testified in support of HB 543. He said the grant of an injunction would force working men and women into unemployment. He stated Montana workers had the right to earn an honest living without having to worry about loss of a job as the result of an ill concerned or improperly obtained injunction.

John Fitzpatrick, Pegasus Gold Corporation, spoke in support of HB 543. His company had a stay in operation in 1990. He stated this stay was granted before the company had an opportunity to respond to the allegation. They subsequently filed a series of documents and the stay was lifted after three weeks; however, they were within days of laying off 100 workers. He related if the stay had not lifted, up to 200 people would have lost their jobs. He asserted this bill was not attempting to protect the companies. **Mr. Fitzpatrick** declared no company had the ability to maintain its operation with full scale staffing while it was shut down. He insisted this bill protected the people who were innocent victims of this process. He declared the legal battles with environmental groups would always be there but a certain sense of fairness needed to be provided to the people who worked for those companies.

Opponents' Testimony:

Don Judge, Montana AFL-CIO, stated many of their members worked in industrial, timber, mining and construction operations. He stated in the mid-1980s organized labor requested and received an injunction against Haines Pipeline. He stated Haines Construction Company was building the pipeline for the Montana Power Company. They were constructing 200 miles of natural gas pipeline under high pressure passing from Deer Lodge to Cut Bank.

Mr. Judge said some of the workers involved in this pipeline project contacted the labor movement, which was already in a dispute because the jobs were non-union, and stated the pipeline was not being built in compliance with the laws and regulations regarding a safe construction of the pipeline. He stated there were a number of welds in the first 100 miles of construction which would give out and cause explosions. They did not meet the requirements of the law. Given that information, they applied for an injunction against further construction of the pipeline. They sought to have the pipeline, which had already been constructed, retested and there were several welds which would not meet compliance. **Mr. Judge** stated the entire 100 miles of pipeline was dug up and the welds were repaired and another company was hired to complete the project. He alleged had the construction been allowed to continue, there would have been 200 miles of a time bomb waiting to explode under private property all the way across the State of Montana.

Mr. Judge declared organized labor had no deep pockets. They would not have filed that injunction if they had been required to post a bond as required by this bill. Had they been refrained from requesting that injunction, the citizens of Montana would have been the ones to suffer. They concur that workers should not be the people to suffer whenever an injunction was posted. If there were problems in projects, the local unions would not be able to enjoin the companies to keep them from operating. He told the committee the intention of this bill was good, but the outcome of this legislation would not be good for the citizens of Montana.

{Tape: 2; Side: A}

Jim Jenson, MEIC, stated MEIC was one of the alleged organizations to have filed the injunction discussed earlier. MEIC did not file or seek any injunction from Golden Sunlight Mine. They had tried to work toward a mutually beneficial goal with the employees of the mine and the environmentalists who believed the mine could operate but was improperly licensed in terms of reclamation. They had worked hard to make sure the mine continued in operation while the problems were being solved. That was what the settlement allowed. Mr. Jenson conveyed the court ruled that an environmental impact statement be prepared. He claimed there were serious problems with this bill.

Mr. Jenson said Page 2, line 2, which was the definition of an industrial operation or activity, stated this included but was not limited to construction, mining, timber, and grazing operation and was very vague. Ranchers needed to be concerned. They were contacted by ranchers who were concerned about their water being polluted. What they found at the beginning of the mine boundary and the ranch property was 18 inches of slime which was washing off of the mine. He announced this was in the very early stages of the development of the mine. He insisted the ability of the rancher to be able to protect his property would be dramatically reduced by this legislation.

Don Spivey, Citizens for a Better Flathead, spoke in opposition to the bill. He said bonding requirements of this bill would be oppressive to an individual. The citizenry was prevented from taking an action when there was fair and just cause. He related this discretion should be left to the judge. He maintained the philosophy was good but the implementation was terrible. He presented an introductory letter from himself, EXHIBIT #13; a letter from B.J. Carlson, #14-A; a letter from Milt Carlson, EXHIBIT #14-B; and a letter from Dorothea Darwall, EXHIBIT #14-C; all letters of opposition to HB 543.

Ted Lange, Northern Plains Research Council, stated they had never sought an injunction on any project. If a situation arose in the future, their members would like them to have the option to do so. Their organization was made of Montana citizens.

Their board was very skeptical of filing a lawsuit. More often than not they were able to negotiate a reasonable settlement.

Melissa Case, Montanans Against Toxic Burning, Montanans for a Healthy Future, spoke in opposition to the bill. From an environmental standpoint, this bill did not allow certain Montana citizens to fully exercise their right to a healthful and safe environment. She expressed under this law, only wealthy people would be able to afford their right to a clean and healthy environment. Their organizations were concerned with the burning of hazardous waste. She stated there had been accidents recently wherein employees had been hurt. They were innocent victims of a disaster. Employers were using their employees to protect their own financial interest. She alleged that was one of the worst things an industry could do. She questioned who was bringing this bill forward and what their real intentions were.

Informational Testimony: None

Questions From Committee Members and Responses:

SEN. WILLIAM CRISMORE asked **Mr. Davis** his view of the pipeline case. **Mr. Davis** stated his company represented Haines Pipeline. He believed **Mr. Judge's** comments missed the point. He related a party seeking an injunction was out money only if and when it was ultimately established that the injunction was improperly obtained. He maintained in the Golden Sunlight case, a formal injunction was not sought. He stated the district court entered a decision finding that the Department of State Lands had violated MEPA in the issuance of a permit to Golden Sunlight. He stated there were also certain violations of the Hard Rock Mining Act. **Mr. Judge** remarked following that decision, the parties entered into settlement negotiations and did settle those aspects of the case. He insisted had **HB 543** been current law, the claim may not have been settled. **Mr. Judge** remarked this bill had required the plaintiffs to post a bond and if Sunlight had been successful in getting the district court to dissolve the injunction, this would have required a minimum amount of financial responsibility of the plaintiffs if, in fact, they had been successful in dissolving the injunction.

SEN. CRISMORE asked **REP. WAGNER** if this bill would pertain to timber sales prior to the sale and **REP. WAGNER** stated the only time this bill would pertain would be if the industrial operation brought employees to the job site to work and then the injunction was rightfully filed in court. He maintained the employees would be made whole for the time they were not working, if the injunction was not held up in court.

SEN. CRISMORE stated that on one occasion on a timber sale which he had purchased, he was stopped because there was an eagle nest on the job. He reported the work stopped until the decision was reached that it was an osprey nest. He declared if this bill had

been in effect, would the plaintiffs have needed to post a bond? **REP. WAGNER** stated that would be correct.

SEN. KLAMPE asked **Mr. Jensen** if it was his interpretation of the bill that it would be necessary for the district court to dissolve the injunction before there would be a cost to the plaintiff. **Mr. Jensen** commented the situation was difficult to interpret. He stated most plaintiffs had to borrow the money. Organizations had not the amount of money needed preventing them from access to the court and he said this was a constitutional defect. They had a right to access to the court. **Mr. Jensen** said in Merchants Association v. Conger, the Montana Supreme Court ruled in another situation where a bond was imposed that though the objectives were worthy of preventing frivolous appeals, imposing a bond would prevent meritorious appeals by the poor but would not prevent frivolous appeals by the rich. He declared it was held unconstitutional for that reason.

SEN. MILLER stated the judge now could require a bond. He believed this would limit access to the court. **Mr. Jensen** stated that page 1, lines 20 and 24, of the bill allowed that a judge may waive a bond requirement in the interest of justice. He said it was under that discretion that judges did not currently require bonds on certain occasions when an injunction was sought.

SEN. MILLER asked **Mr. Davis** what the cost of a bond might be and **Mr. Davis** answered that would always be answered on a fact specific basis based on wages, salaries and benefits. It was his understanding it would be in the nature of 10%.

SEN. BILL WILSON asked **Mr. Davis** where the language could be found in the bill guarantying employees compensation and **Mr. Davis** answered that would be found on page 1, lines 29 and 30. He said this stated the bond must be conditioned to indemnify the employees of the party enjoined or restrained against lost wages, salaries, and benefits sustained by reason of the injunction or restraining order. He maintained the key term would be "indemnification". He stated a person was indemnified once that person had sustained a loss. He said when the bond was set, the condition of the bond would be that the payor would pay the employees to the extent which they had lost wages if and when the injunction was dissolved.

SEN. WILSON asked **Mr. Judge** to respond to the same question. **Mr. Judge** stated that if an injunction was requested, a bond was filed and the person requesting the injunction lost the case, the bond would be there to guarantee the payment of wage; if the requestor won the case, they would not pay the wages. He said there was nothing in the bill which guaranteed the company would pay the wages; this was a one-sided bill. He said it applied only to those filing injunctions and did nothing to protect the workers' wages from the company if the company was found guilty.

SEN. KLAMPE asked Mr. Judge what the bond would have cost them in the Haines case and Mr. Judge stated there were several hundred high wage employees. He said the variable would be how much time would the injunction impose a shutdown on the project. He assumed it would be several \$100,000 in wages.

SEN. WILSON asked Ms. Johnson if there was a big problem in this area or was this bill only to dissuade challenges to operations. Ms. Johnson stated it was one of those threats which was in the background. She stated in Idaho, several groups asked for an injunction on several regions of the national forest for protection of salmon habitat. She said they asked to enjoin all activities on all forest lands including mining, logging, road building, etc. She reported a judge sitting in for the original judge, granted the injunction and currently there was a stay on that injunction. She alleged the threat of the injunction was very real. Her goal was to keep people working in fields which were highly contentious fields.

SEN. KLAMPE asked Mr. Davis if the amendment was necessary and Mr. Davis stated the original language, which was being supplemented by the amendment, was included to clarify the minimum bond set forth in Section 1 (2) of the bill and did not limit the damages which may be recovered. The State's concern was that the language in the bill went a little farther than necessary and may have been interpreted as creating a separate statutory cause of action.

Closing by Sponsor:

REP. WAGNER reiterated this bill was to provide fairness to employees. He maintained if injunctions were rightfully filed, this would not cost the requestor a penny. REP. WAGNER maintained this bill would not stop access to courts.

EXECUTIVE ACTION ON HB 428

MOTION/Vote: SEN. CRISMORE MOVED HB 428 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY on oral vote. SEN. HERTEL will carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 536

Motion/Vote: SEN. CRISMORE MOVED HB 536 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY on oral vote. SEN. BENEDICT will carry the bill on the Senate floor.

EXHIBIT NO. 11DATE 3-14-95BILL NO. HB 543

AMENDMENTS TO

HOUSE BILL 543

(Third Reading Copy)

Presented by Rep. Wagner) (Camp)

From:

John A.

Rep. Wagner
will proof
This.

1. Page 2, lines 10 through 14.

Following: line 9

Strike: subsection 4 in its entirety

Insert: "(4) This section does not prohibit a person wrongfully enjoined from filing an action for any claim for relief otherwise available to that person in law or in equity and does not limit the amount of judgment that may be obtained in that action."

-End-

P.O. Box 856
Whitehall, MT 59759

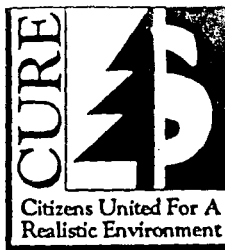


EXHIBIT NO. 12
DATE 3-14-95
BILL NO. HB 543 (406) 287-3012
FAX (406) 287-3242

TESTIMONY OF TAMARA J. JOHNSON
HB #543

Good morning. Mr. Chairman, members of the committee, Representative Wagner, for the record, my name is Tammy Johnson. I am here today on behalf of CURE (Citizens United for a Realistic Environment).

HB #543 is a very important bill for our membership. As Representative Wagner explained in his statement, this bill would require the posting of a bond in an amount sufficient to cover employees wages, salaries and benefits when an injunction or restraining order against an industrial operation or activity is granted through the court system.

In everyday life, we are asked to make monetary commitments to guarantee something that we are sincere about. If you purchase a home or some land, you are required to put down earnest money to show that you are committed to the purchase. If you make a motel reservation by phone, you are asked to guarantee that reservation with a credit card. You are asked to prepay when you purchase an airline ticket. The reason for this is simple. No one is willing to take a financial loss due to a decision made by someone else. If you decide to not go through with the land or home purchase, stay in another motel, or drive instead of fly, you will forfeit the money you have paid as a guarantee of your intentions.

The court system is being used extensively for a variety of reasons these days, one of which is to request injunctions or restraining orders against industrial activities such as mining, timber, grazing, utilities, oil and gas, and construction. The problem with injunctions on legitimate businesses is that hardworking people who are employed in these industries find themselves faced with the possibility of being out of work. They are not going to be unemployed because they are not good, valuable employees. They are not going to be unemployed because they choose to be. They are unemployed because someone else has arbitrarily decided that they do not approve of the nature of their employers business. Sometimes, dedicated workers are faced with unemployment because our own state agencies are believed to have made an error.

Whether the party who brings the suit is right or wrong, is a decision for the court. The right of an individual or group to bring such an action in our courts is not being threatened, in spite of what you will probably be told by those opposing this bill. In fact, I support any citizens right to bring suit if they feel they have been wronged. But I, and quite literally, thousands of other Montana citizens, are tired of bearing the brunt of others actions. You see, we, the industry employees, are the ones who have been caught in the middle.

My children should not be made to suffer because someone does not like the work their father does for a living. My husband has worked as an electrician for a mine for over seven years. In seven years, he has only missed 2 scheduled work days due to my fathers death. He has had perfect attendance for 6 consecutive years. We have two children, one of which is developmentally disabled. Our health insurance is a godsend and my husbands wages also provide a home for his parents. We don't want praise and we don't want sympathy. What we want is simply to work hard, raise our family and be a productive member of our community and our state.

My husband and I have spent many sleepless nights worrying about the possibility of being unemployed and quite frankly, my husbands fear, which is shared by our whole family, of being unemployed simply because he is a miner, is the main reason I am standing before you today. Although I have a great deal of respect for all of you and for this institution, I would choose to spend my time being at home with my family, reading to my son's second grade class and leading my daughters Girl Scout troop instead of making the round trip from Whitehall to Helena on a daily basis to visit with you.

The opponents to this bill will probably tell you that their rights cannot be infringed upon, that they can't afford to post such a bond. Well, my right to work, live and raise my family cannot be infringed upon either and my family cannot afford to be without an income or insurance.

We are not asking citizens to post a bond to cover the loss of the employer, although I believe that those at the top need to eat as well. We are not asking our government entities to post a bond. We are simply asking for some fairness here. Please give HB #543 and the proposed amendment a do pass recommendation and know that in doing so, you are supporting thousands of hardworking Montanas who otherwise may unfairly be denied their right to make a living. Thank you.

DATE 2-14-12
BILL NO. HB 543

March 12, 1995

Memo to: Senate Business and Industry Committee
Senator John Hertel, Chairman

presented by Don Spivey

Subject: House Bill 543

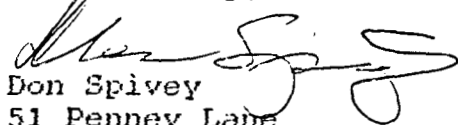
On behalf of myself and the Citizens For a Better Flathead I
urge you to vote NO on HB 543.

I consider this an extraordinary attempt for all practical
purposes to prevent injunctive and restraining order relief
in cases where alleged infractions of environmental laws are
involved.

This bill represents unconscionable special interest
legislation designed to protect business interests and
preclude public relief. This is BAD PUBLIC POLICY and
undoubtedly unconstitutional.

Please vote NO on HB 543.

Respectfully,


Don Spivey
51 Penney Lane
Columbia Falls 59912
257-0724

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 14-A
DATE 3-14-95
BILL NO. HB 543

presented by Don J.

March 11, 1995

Senator John Hertel
Capitol Station
Helena MT 59620-1706

Dear Senator:

This is no time to allow businesses or individuals to get away with practices that threaten the environment. Please vote no on SB 543.

Sincerely,

B. J. Carlson

B.J. Carlson

375 Grandview Drive
Kalispell, MT 59901

cc: Marc Racicot

EXHIBIT NO. 14-BDATE 3-14-95BILL NO. HB 543*presented by Song*

MILT CARLSON
375 Grandview Drive
Kalispell, MT 59901-2614

March 10, 1995

Senator John Hertel
Capitol Station
Helena MT 59620-1706

RE: Vote "NO" on HB 543

Dear Senator:

This letter is to urge you to eliminate this attempt to prevent the citizens of Montana or the State itself from taking effective action against an operation that threatens public health or the environment.

When someone puts the citizenry or the land at risk, that someone must bear the responsibility for that action and not put up barriers to slow or negate effective relief.

As one active in participation in local government, I see this bill as a narrow, mean-spirited threat to that participation and ask that HB 543 be defeated in your forum.

Sincerely,


Milt Carlson

Copy to Governor Racicot

SENATE BUSINESS & LEGISLATION
EXHIBIT NO. 14-C
DATE 3-14-95
BILL NO. HB 543

presented by Don Sp

DOROTHEA DARWALL
92 Grandview Drive
Kalispell, MT 59901

March 10, 1995

Senator John Hertel
Capitol Station
Helena MT 59620-1706

Dear Senator:

This letter is to vote "NO" on HB 543 which would attempt to prevent the citizens of Montana or the State itself from taking effective action against an operation that threatens public health or the environment.

As a retired Public Health Nurse, I resist those who would try to threaten public health. When someone puts the citizenry or the land at risk, that someone must bear the responsibility for that action and not put up barriers to slow or negate effective relief.

Kindly put HB 543 to rest as it represents a step back in our quest for promoting the general welfare and health.

Sincerely,

Dorothea Darwall

Dorothea Darwall

Copy to Governor Racicot

DATE

March 14, 1995

SENATE COMMITTEE ON

B & A

BILLS BEING HEARD TODAY:

HB 335 - Rep. Squires, HB 518
HB 536 Rep. Mills. HB 543 Rep. Wagner

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PLEASE PRINT

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Check

Name	Representing	Bill No.	Support
Kathy D. Collins	Self (consumer)	HB335	X
Barbara Larsen	MonTECH	H.B.335	Ne
Melissa Case	Coalition of Mtns (cared w/ disabilities)	HB 335	X
Terry Krantz	SRS Medicine	HB335	X
Peggy Trenk	WETA	HB543	✓
Mum Jamison	mt Assoc. of PT's, Speech Path + Audial, Nutritional, + clinical laboratorys	HB 518	✓
Leo Giacometto			
Leo Giacometto	Governors Office	HB518	✓
Ben Hardan	Self	HB518	✓
Stuart Doggett	mt Veterinary medical Assoc.	HB 518	✓
Ron Langhull	DrugMart MSPA	HB 536	✓
DENNIS TVERSON	AMCPA	HB536	✓
John Wolfgram	Lorenson Pharmacy	HB 536	
Bob Williams	MT MILE INC	543	2

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE

March 14 1995

SENATE COMMITTEE ON

S E ABILLS BEING HEARD TODAY: HB 335 - Rep. Squires, HB 518HB 536 Rep. Mills, HB 543 Rep. Wagner

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PLEASE PRINT

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Check

Name	Representing	Bill No.	Support
Tamm J. Johnson	CURE	543	X
John P. Davis	CURR	543	X
Melissa Case	Montanans Against Toxic Burning	543	
John Fitzpatrick	Pegasus Gold Corp	HB 543	X
Ted Lange	NPRC	543	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SEC

DATE March 14, 1995

SENATE COMMITTEE ON Business and Industry

BILLS BEING HEARD TODAY HB 335 Rep. Squires

HB 518 Rep. Tuss HB 536 Rep. Mills

HB 543 Rep. Wagner

< ■ > PLEASE PRINT < ■ >

Check

Name	Representing	Bill No.	Support
LANCE MELTON	DEPT. OF COMMERCE	518	X
Steve Shapiro	Mont. Nurses Assoc.	518	X
Don Judge	MT STATE AFL-CIO	HB 543	
Howard Summer	MT ASSC. Regtors	518	X
STEVE MELOY	Dept of Comin	518	X
Dan Spruiell	SELD	543	
Jim Jensen	MEIC	543	
Helen Christensen	MT STATE AFL-CIO	518	X
Steve Yeaker	MT Association of Acupuncture & Oriental Medicine (AND) MT Council for Maternal & Child Health	518	X
Tom MacForton	GOLDEN SUNLIGHT CURE Minn.	543	X
PETER LEECH	FELDER	335	X
Bill Olson	AARP	HB 536	✓
Jason Dykstra	MAP	HB 335	X
Edward L. Smith	MAP		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Jim Smith
REGISTER F10

MT R Assoc. HB 536 X

~~3~~ B 543, 454
Vagner Rep. Ha.

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REGISTER.F10

the regulatory community, and the consumers. **Mr. Hutchinson** would recommend the committee's support of **HB 409**.

John Cadby, Montana Bankers Association, remarked he was trying to say something different in support of this bill that hadn't already been said. Their organization philosophically believed in removing as many restrictions as possible on commercial banks, so they could more readily compete with other financial service providers, mutual funds, insurance agents, stockbrokers, credit unions that branch anyplace, anytime, and savings banks which branch anywhere. He stated the person on the street didn't care where they received financial services if they were convenient, the service was good, and the price was right. **Mr. Cadby** conveyed anytime a bill was introduced to help commercial banks compete, MBA always supported it.

Steve Browning, Norwest and First Bank System, stated he was here to support this legislation. There were lots of stereotypes that happened in life and also the legislature. His two clients had been stereotyped for some years as the Minnesota Twins. Virtually all the proponents that had spoken in favor of this bill had referred to themselves as locally owned. He suspected for the non-bankers in this room and he was one, the only way one could own stock in a bank was to purchase it in a public traded stock. He was a local owner of his clients, First Bank and Norwest. He had owned their stock for some years. That was probably true with most people. If a person had a pension plan, that person may be a local owner of that bank.

Mr. Browning contended First Bank and Norwest supported reform and they supported **HB 409**. They didn't get any benefits from this bill. They had their facilities in the shape they wanted them. In looking at the proponents of **HB 409**, they were the fiercest opponents on interstate branching. They came in with the opt out bill. They also wanted the consumer bill, the fairness bill, economic bill, and leveling the playing field; Norwest and First Bank welcomed the competition. He urged the committee to pass **HB 409**.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

SEN. GARY FORRESTER asked **Riley Johnson** what was the difference of a detached facility and a branch bank with passage of **HB 409**. **Mr. Johnson** referred that question to **Bruce Gerlach**, who stated a branch bank required an advisory board of directors; a detached facility required no advisory board. **Mr. Gerlach** said a branch bank must offer all the services that the main bank offered and the detached facility may offer the services, but it was not mandated in **HB 409**. The location of a detached facility, based on population, was the number of banks allowed in a community.

SEN. FORRESTER questioned Bob Waller about one of his banks in Billings that SEN. FORRESTER banked with and now, under this bill, Mr. Waller would be able to open the new detached facility and First Citizens Bank would be able to open their new detached facility and would be able to offer all banking services. SEN. FORRESTER didn't see the difference between this and branch banking. He thought it was branching anywhere they wanted to do it and now they were able to open a branch in Colstrip, Hardin, etc. Mr. Waller stated it helped them and also the community they served as well. The detached facility they were opening on the west end of Billings currently would offer services related to checking accounts and it seemed silly to make a customer drive three miles downtown to make application for a loan when they had a facility in that customers back yard.

SEN. FORRESTER asked John Cadby if HB 409 passed, what was the difference between branch banking and detached facility banking. Mr. Cadby said basically there was no difference between the branch banking or detached facility banking. Mr. Gerlach cited there were restrictions as to the placement of a branch vs. the detached facility. If SEN. FORRESTER was asking about decision making authority, whether it was a branch or a detached facility, decisions would be made at the main bank.

SEN. MIKE SPRAGUE asked Mr. Waller to interpret lines 9 through 12 on Page 2. Mr. Waller said they could not establish branches in any community already served by a financial institution. SEN. SPRAGUE asked him if they didn't already do that with the branch banking in Wyoming and/or branch banking in Montana. Mr. Waller said they had no branch banks in Wyoming. They had a free standing bank in Montana that was not part of First Interstate. SEN. SPRAGUE commented, in reality, it was. Mr. Waller conveyed they were part of the same holding company, but they were two free standing state chartered banks in different states with their own board of directors and their own capital structure.

{Tape: 1; Side: B}

SEN. SPRAGUE questioned Mr. Browning about existing law and how it related to deleted lines 28 through 30, Page 1, and line 1, Page 2. Mr. Browning stated banks, other than First Bank and Norwest, could branch in Montana in barren towns. That was the existing law. Mr. Browning asserted the language stricken on lines 28 through 30, came from the proponents of HB 207. Basically, they wanted language when it worked for them; however, when it no longer worked, they wanted to remove that language. They discovered those restrictions they put on the detached facilities now didn't work for them and so no longer wanted it. Norwest and First Bank had to live with that language.

SEN. SPRAGUE asked Mr. Browning how HB 409 differed from HB 207 and assumed both bills passed, would that be a conflict of intent. Mr. Browning said the committee could seek to amend Page 2, line 9, the phrase "other than a bank owned by a holding

EXECUTIVE ACTION ON SB 411

Motion/Vote: SEN. FORRESTER MOVED SB 411 BE TABLED. The motion CARRIED UNANIMOUSLY on voice vote.

EXECUTIVE ACTION ON HB 543

Motion: SEN. KEN MILLER MOVED TO ADOPT AMENDMENTS (HB054302-A.ABC), EXHIBIT #2.

Discussion: SEN. MILLER had a problem with HB 543 and hoped he addressed the problem with his amendments (EXHIBIT #2). His main concern was the bill stopped any possibility of any party seeking an injunction or restraining order because of parameters of the requirement to get a bond. His amendments put a limit on the amount required for security which was \$10,000. His feeling was that \$10,000 would stop the frivolous injunctions.

SEN. BENEDICT thought the \$10,000 threshold was too low for large companies. He thought \$50,000 would be a more logical amount.

SEN. EMERSON agreed with SEN. BENEDICT. He stated the \$10,000 was enough if it was an individual person trying to get an injunction; however to groups, the \$10,000 wouldn't make them blink an eye. He remarked this would not slow down the frivolous law suits; perhaps the \$50,000 or \$100,000 would stop those trivial suits.

SEN. SPRAGUE stated he would use caution on this amendment, although he knew the intent was good; however, a bond was really only a rental for 10%, bringing the \$10,000 down to \$1,000 and this bill would basically be destroyed. SEN. SPRAGUE thought this bill sent a warning about frivolous law suits and said the bill should be left as it was.

SEN. TERRY KLAMPE stated he supported the amendments.

SEN. BILL WILSON related he supported the amendments, but still didn't like the bill and didn't know if he would vote for HB 543. The amendments would make the bill more realistic. He asked SEN. SPRAGUE about the rental fee of 10% relating to the \$10,000. SEN. SPRAGUE said basically, a person must go to an insurance company and get a bond in whatever amount and they were putting that IOU in the court, but really no money was put up and all they were obligated for was the rental. SEN. WILSON stated if the bill were left wide open, he wouldn't take any of those people on. He related the amendments made it more fair.

SEN. MILLER asserted \$100,000 was way too much and he also thought \$50,000 was too much. He realized the intent was to cover payroll and there were many companies where \$100,000 wouldn't cover the payroll because it could go on for six months. When he did the amendments, he had talked to Linda at Hoiness

LaBar, which was quite a large bonding company in Montana and she stated they couldn't bond something like that as there was no end to it. He thought the intent of the bill was to stop the frivolous law suits, even though there were groups out there with lots of money, but they couldn't limit it to smaller groups. He thought that accomplished what the sponsor had desired.

Vote: The motion to ADOPT AMENDMENTS, EXHIBIT #2, CARRIED 5-4 on roll call vote (#1).

Motion: SEN. MILLER MOVED HB 543 BE CONCURRED IN AS AMENDED.

Discussion: SEN. EMERSON stated the bill wasn't worth much now, but was better than nothing.

SEN. SPRAGUE said he would be curious about all those that wanted this bill amended, he would now like to see their votes.

SEN. WILSON contended it would still cost money, as on a \$10,000 bond, a person would be out \$1,000. To a small outfit with shallow pockets, that would be a hardship, so he thought this would dissuade the frivolous attacks.

SEN. BENEDICT stated he supported this bill; however, he didn't think what the committee did to the bill was right and this should go with a Conference Committee who would work on HB 543.

SEN. MILLER maintained in talking with Linda, it didn't sound like they would even bond the \$1,000 as they were looking at the prevailer. They would not do the 10% (\$1,000); it would be the \$10,000 people would need to put the injunction in place.

Vote: The motion HB 543 BE CONCURRED IN AS AMENDED CARRIED 7-2 on voice vote with SEN. WILSON and SEN. KLAMPE voting "NO".

Motion: SEN. BENEDICT MOVED TO FURTHER AMEND HB 543.

Discussion: Bart Campbell stated Page 2, lines 10 through 13, to strike the subsection and put new language in, they thought it was a clarification.

SEN. BENEDICT stated he thought this would help the opponents somewhat, in the fact it put more direction in as far as those that did have to come up with a bond.

SEN. KLAMPE asked if this was the amendment and SEN. BENEDICT reiterated "case law", so it really wasn't necessary.

Vote: The motion CARRIED UNANIMOUSLY by voice vote.

Motion: SEN. BENEDICT MOVED TO FURTHER AMEND HB 543 to change the \$10,000 passed on the previous amendment to \$50,000.

Discussion: SEN. WILLIAM CRISMORE stated he liked the idea of getting it up as he thought the \$10,000 was too low. He thought, if he wanted to do it, the cost would be very low to get a \$10,000 letter of credit.

SEN. MILLER asked if SEN. CRISMORE would be willing to put \$10,000 up knowing he was probably going to lose; was it worth it to him to spend \$10,000 to harass the company.

SEN. CRISMORE said they had one going on at present in Lincoln County and he was sure this would fall into it. He contended this was regarding a subdivision, which included a group of people that were "not in their back yard".

SEN. MILLER declared it wouldn't apply as there were no "employees" and not an "operation". He said this only applied to an operation with employees. He related it had nothing to do with projects planned for the future. He said that was another subject.

SEN. SPRAGUE declared it basically did apply because in that particular case they could have started preplanning, bid letting, contracts, etc.

Vote: The motion to FURTHER AMEND HB 543 from \$10,000 to \$50,000 CARRIED 5-4 on roll call vote (#2).

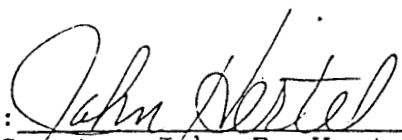
SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 16, 1995

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration HB 543 (third reading copy -- blue), respectfully report that HB 543 be amended as follows and as so amended be concurred in.

Signed:


Senator John R. Hertel, Chair

That such amendments read:

1. Title, line 7.

Following: "SECURITY"

Insert: "IN AN AMOUNT NOT EXCEEDING \$50,000"

2. Page 1, lines 27 through 29.

Strike: "that" on line 27 through "effect" on line 29

Insert: "not exceeding \$50,000"

3. Page 2, lines 10 through 13.

Strike: "A" on line 10 through "order" on line 13

Insert: "This section does not prohibit a person who is wrongfully enjoined from filing an action for any claim for relief otherwise available to that person in law or equity and does not limit the recovery that may be obtained in that action"

-END-

 Amd. Coord.

 Sec. of Senate


Senator Carrying Bill

611152SC.SRF

MONTANA SENATE
1995 LEGISLATURE
BUSINESS AND INDUSTRY COMMITTEE
ROLL CALL VOTE

DATE 3-16-95 BILL NO. HB 543 NUMBER 1
MOTION: Sen. Miller's Amendment to HB 543

[illegible]

MONTANA SENATE
1995 LEGISLATURE
BUSINESS AND INDUSTRY COMMITTEE
ROLL CALL VOTE

DATE 3-16-95 BILL NO. HB 543 NUMBER 2

MOTION: Amendments: \$ 10,000 to \$ 50,000 (change)

HB 054302.ABC 5-years HB 054303.1
R.C.V. #1 4-no's

[illegible]

Amendments to House Bill No. 543
Third Reading Copy

Requested by Sen. Miller
For the Committee on Business and Industry

Prepared by Bart Campbell
March 15, 1995

1. Title, line 7.

Following: "SECURITY"

Insert: "IN AN AMOUNT NOT EXCEEDING \$10,000"

2. Page 1, lines 27 through 29.

Strike: "that" on line 27 through "effect" on line 29

Insert: "not exceeding \$10,000"